

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 J & J SPORTS PRODUCTIONS, INC.,

4 Plaintiff

5 v.

6 SOKEN CHEA, individually and d/b/a
7 Vaping Aristocrats; and Vaping Aristocrats,
8 Inc., an unknown business entity d/b/a Vaping
9 Aristocrats,

Defendants

Case No.: 2:17-cv-1210-APG-GWF

**ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT**

[ECF No. 16]

10 Plaintiff J&J Sports Productions, Inc. moves for default judgment against defendant
11 Soken Chea. Chea has not appeared in the case or opposed the motion for default judgment.

12 Obtaining a default judgment under Federal Rule of Civil Procedure 55 is a two-step
13 process. *See Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). First, “[w]hen a party against
14 whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that
15 failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ.
16 P. 55(a). After default is entered, a party may seek entry of default judgment under Rule 55(b).

17 Upon entry of default, I take as true the factual allegations in the non-defaulting party’s
18 complaint, except those related to the amount of damages. Fed. R. Civ. P. 8(b)(6); *TeleVideo*
19 *Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) (quotation omitted). Nonetheless,
20 “[e]ntry of default does not entitle the non-defaulting party to a default judgment as a matter of
21 right.” *Warner Bros. Entm’t Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1071 (CD. Cal. 2004) (citation
22 omitted). The “general rule [is] that default judgments are ordinarily disfavored. Cases should
23 be decided upon their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472 (citing *Peno*

1 *v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985)). Whether to grant a default
2 judgment lies within the district court's discretion. *Id.*

3 I consider the following factors in determining whether to grant a default judgment:

4 (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claims;
5 (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the
6 possibility of a dispute concerning material facts; (6) whether the default was due to excusable
7 neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring
8 decisions on the merits. *Eitel*, 782 F.2d at 1471-72.

9 J&J has satisfied the procedural requirements for default judgment. The clerk has entered
10 default against Chea. ECF No. 10. Chea has not appeared in this case. Thus, there is no
11 procedural impediment to entering a default judgment.

12 The first *Eitel* factor considers whether J&J will suffer prejudice if a default judgment is
13 not entered. *See PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (CD. Cal. 2002);
14 *Next Gaming, LLC v. Glob. Gaming Grp., Inc.*, No. 214-CV-00071-MMD-CWH, 2016 WL
15 3750651, at *3 (D. Nev. July 13, 2016). Chea has failed to defend the lawsuit. If default
16 judgment is not entered, J&J will be unable to pursue its claims against Chea. This factor weighs
17 in favor of entry of default judgment.

18 The second and third *Eitel* factors favor a default judgment when the "plaintiff state[s] a
19 claim on which the plaintiff may recover." *Danning v. Lavine*, 572 F.2d 1386, 1389 (9th Cir.
20 1978); *see also* Fed. R. Civ. P. 8. J&J's complaint sufficiently pleads that Chea improperly
21 intercepted and displayed J&J's showing of the Floyd Mayweather v. Marcos Rene Maidana
22 championship boxing match on March 3, 2014 (the "Program"). ECF No. 1. Thus, the second
23 and third *Eitel* factors weigh in favor of entry of default judgment.

1 In assessing the fourth *Eitel* factor, I consider “the amount of money requested in relation
2 to the seriousness of the defendant’s conduct, whether large sums of money are involved, and
3 whether ‘the recovery sought is proportional to the harm caused by [the] defendant’s conduct.’”
4 *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1212 (W.D. Wash. 2014) (quoting
5 *Landstar Ranger, Inc. v. Earth Enters., Inc.*, 725 F. Supp. 2d 916, 921 (N.D. Cal. 2010));
6 *PepsiCo., Inc.*, 238 F. Supp. 2d at 1176. J&J requests (1) the maximum \$10,000.00 statutory
7 damages under 47 U.S.C. § 605(e)(3)(C)(i)(II) and (2) \$30,000.00 under 47 U.S.C.
8 § 605(e)(3)(C)(ii).¹ These amounts are justified under the fourth *Eitel* factor.

9 The fifth *Eitel* factor weighs the possibility of a dispute regarding material facts in the
10 case. *PepsiCo., Inc.*, 238 F. Supp. 2d at 1177. “Upon entry of default, all well-pleaded facts in
11 the complaint are taken as true, except those relating to damages.” *Id.* (citation omitted). Chea
12 has not appeared or rebutted any of J&J’s allegations. J&J has presented evidence describing its
13 investigation supporting its allegation that the interception of the signal was willful and for
14 commercial gain, justifying increased damages under 47 U.S.C. § 605(e)(3)(c)(ii). Thus, the
15 fifth *Eitel* factor weighs in favor of entry of default judgment.

16 The sixth *Eitel* factor considers whether the defendant’s default is due to excusable
17 neglect. *PepsiCo., Inc.*, 238 F. Supp. 2d at 1177. The clerk of court entered default on April 3,
18 2018, and Chea still has not appeared over a year later. ECF No. 10. There is no evidence before
19 me that the failure to respond is due to excusable neglect. *See United States v. High Country*
20 *Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (per curiam) (holding that it was “perfectly
21 appropriate” for the district court to enter default judgment against a corporation that failed to
22 appear in the action). Given the time period during which Chea had notice of this action yet
23

¹ J&J could request up to \$100,000 under that statutory section.

1 failed to appear, it is unlikely that Chea failed to respond due to excusable neglect. Thus, the
2 sixth *Eitel* factor weighs in favor of entry of default judgment.

3 Finally, the seventh *Eitel* factor takes into account the policy favoring a decision on the
4 merits. "Cases should be decided on their merits whenever reasonably possible." *Eitel*, 782 F.2d
5 at 1472. But Chea's failure to respond to the complaint "makes a decision on the merits
6 impractical, if not impossible." *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177. Thus, while this final
7 *Eitel* factor always weighs against an entry of default judgment, it does not preclude me from
8 entering a default judgment. A decision on the merits is desirable, but under these
9 circumstances, default judgment is warranted.

10 IT IS THEREFORE ORDERED that the plaintiff's motion for default judgment against
11 defendant Soken Chea (**ECF No. 16**) is **GRANTED**. The clerk of court shall enter judgment in
12 favor of plaintiff J&J Sports Productions, Inc. and against defendant Soken Chea in the following
13 amounts:

14 a. For the Violation of Title 47 U.S.C. § 605(e)(3)(c)(i)(II): \$10,000.00

15 b. For the Violation of Title 47 U.S.C. § 605(e)(3)(c)(ii): \$30,000.00

16 IT IS FURTHER ORDERED that J&J may file a motion for attorneys' fees by June 12,
17 2019.

18 DATED this 28th day of May, 2019.

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21 _____
22 ANDREW P. GORDON
23 UNITED STATES DISTRICT JUDGE